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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 7th November 2007

No.12200— li/ 1(BH) -19/05-L.E.— In pursuance of Section 17 of the Industrial Disputes Act,1947 (14 of 1947), the Award, dated the 18th September 2007 in I.D. Case No. 1 of 2006 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of Executive Engineer(Elect.), CESCO, Dhenkanal Electrical Division, Dhenkanal and its Workman Shri Rajendranath Nanda, S/o Late Ghanshyam Nanda at Lokanathpur, P.O. Badaswanlo, Dist. Dhenkanal-759039 was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT
SAMBALPUR
INDUSTRIAL DISPUTE CASE No.1 OF 2006

Dated the 18th September 2007

Present :

Shri P. K. Mahapatro, LL. B.,
Presiding Officer,
Labour Court, Sambalpur.

Between :

The Management of
Executive Engineer (Elect.),
CESCO, Dhenkanal Electrical
Division, Dhenkanal. .. First Party—Management

And

Its Workman .. Second Party— Workman
Shri Rajendranath Nanda,
S/o Late Ghanashyam Nanda,
At Lokanathpur,
P. O. Bdasuanlo,
District Dhenkanal - 759039.

Appearances :

For the First Party — Management .. Shri S. K. Harichandan.
Dy. Manager(Law).

For the Second Party— Workman .. Self.

AWARD

This case arises out of the reference made by the Government of Orissa, Labour & Employment Department under Sections 10 and 12 of the Industrial Disputes Act, 1947 vide memo No. 11167(5), dated the 30th December 2006 for adjudication scheduled below :

“Whether the action of the Executive Engineer (Elect.), CESCO Ltd., Dhenkanal Electrical Division Ltd., Dhenkanal is in terminating the services of Shri Rajendranath Nanda, Meter Reader of Kamakhyanagar subdivision, Kamakhyanagar with effect from the 1st September 2004 by way of refusal of employment is legal and/or justified? If not, what relief is Shri Nanda entitled to ?”

2. The workman in his statement of claim has averred that he being an Ex-Serviceman had applied to the management for a post in consonance with the advertisement published in the daily Newspaper “The Samaj”, dated the 29th April 2002 and then he was selected and got an appointment order vide office letter No.4563, dated the 26th June 2002 which was issued by the present management and then his services was utilised for recording the meter reading and while performing his duty as such, he was verbally released from his duty on the 15th September 2004 and then he approached the officers of the Labour Department for relief and accordingly a conciliation proceeding was taken up, but as it failed, so the matter was moved to the Government and then it was referred to this court for answering it.

3. The management has challenged it by stating that there is no cause of action for raising such an industrial dispute and if the entire *pros and cons* of the issues raised by the workmen are taken up in its present form then it can be safely said that the M/s Orange Securitas Private Ltd. is a necessary party and the role of the present management is limited to the extent that they have only written to M/s Orange Securitas Private Limited for providing manpower to perform certain works as detailed in the advertisement, dated the 29th April 2002 and the said action of the management is not sufficient to conclude that there is existence of “Employer” and “Employee” relationship in between them. To sum up, the management has prayed for answering the reference against the workman.

4. By taking note of the pleadings of the parties, the following issues are settled for adjudication.

ISSUES

(i) “Whether the action of the Executive Engineer (Elect.), CESCO Ltd. Dhenkanal Electrical Division Ltd., Dhenkanal is in terminating the services of Shri Rajendranath Nanda, Meter Reader of Kamakhyanagar Subdivision, Kamakhyanagar with effect from the 1st September 2004 by way of refusal of employment is legal and justified ?

(ii) If not, to what relief Shri Nanda is entitled ?”

5. During the course of hearing the workman has examined 3 witnesses and has marked Exts. 1 to 11 to substantiate his case. In turn, the management side examined its Executive Engineer, as management witness No.1 and another witness, namely Krushna Chandra Puspak who was working under M/s Orange Securitas Private Limited as Assistant Security Officer is examined as management witness No.2 . To add to this Exts. A to D are marked from the side of the management to substantiate the plea taken by them in the pleading . I will deal with the merit of the documents filled by the parties as and when required.

6. It is well forthcoming from the Ext. 1 that the Chief Executive Officer of CESCO had published the advertisement in daily “Samaj” for recruitment of some temporary staff to check pilferage of energy and in consonance with the said advertisement, the workman had applied and subsequently he was also appointed as a Meter Reader. The main challenge of the parties relates to the fact that the workman has claimed to be a regular employee under the management , whereas , the management has come up with the plea that he is an employee under a Private

Security Agency, namely M/s Orange Securitas Private Limited and not under the management. On perusal of the pleading the evidence adduced by the workman it is forthcoming that he was working till the 14th September 2004 and thereafter employment was refused to him by way of verbal order. In this connection the pleading the workman is very clear. But the reference revolves round the fact that employment was refused to him from the 1st September 2004. By way of explanation, the workman has come up with the plea that he worked till the 14th September 2004, but no payment was given to him from the 1st September 2004 till the 14th September 2004. As to whether payment was not given to the workman for the above referred period is not the deciding factor, but the crux of the issue is the crucial date on which employment was refused to him. If the said aspect is taken into account by taking note of the admissions of the workman, then in my opinion there is anomaly in the situation. The reference relates to a date which is not a fact as pleaded by the workman. As per law, the court can not go beyond the reference. In my opinion the above anomaly can not be cured by any manner. But I am of opinion that there exists an industrial disputes between the parties and the same can be better answered if the schedule of reference is amended to the extent that the refusal of employment is with effect from the 1st September 2004 / the 14th September 2004. So at this stage there is no need of threshing the other point as to whether the workman is an employee of the management or he is an employee of M/s Orange Securitas Private Limited. Rather in my opinion the purpose will be better served if the appropriate Government will come up with an amended reference. Hence the following award.

AWARD

The reference is answered on contest with the conclusion that there is no dispute between the parties on the date stipulated in the scheduled.

Dictated and corrected by me.

P. K. MAHAPATRO
18-9-2007
Presiding Officer
Labour Court, Sambalpur

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18-9-2007
Presiding Officer
Labour Court, Sambalpur

By order of the Governor
N. C. RAY
Under-Secretary to Government